

REPORT ON THE PROGRESS OF THE SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS AND TO PROVIDE ADDITIONAL FUNDING

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. INOUE, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. Res. 473]

The Select Committee on Indian Affairs, to which was referred the resolution (S. Res. 473) to provide additional funding for the Special Committee on Investigations of the Select Committee on Indian Affairs, having considered the same, reports favorably thereon without amendment and recommends that the resolution as amended do pass.

INTRODUCTION

The Special Committee on Investigations of the Select Committee on Indian Affairs, authorized by the Senate in February, 1988,¹ has a unique mission in the annals of Congressional and federal oversight of American Indian affairs. The Senate itself has a long history in investigating the federal government's relationship to Indians.² Yet never before in that history has a special committee been assembled whose sole task was to conduct a comprehensive and intensive investigation of the entire spectrum of the federal government's relationship with American Indians.³ The Special Commit-

¹ S. Res. 381 21(c) (100th Congress, 2nd Session, Feb. 26, 1988), provided that the Special Committee on Investigations is authorized to "study or investigate any and all matters pertaining to problems and opportunities of Indians and the Federal administration of mineral resources, including but not limited to resource management and trust responsibilities of the United States Government, Indian education, health, special services, and other Federal programs, and related matters."

² Specially authorized Senate investigations relating to Indians span more than one hundred years: S. Rep. No. 268, 41st Cong., 3rd Sess. (1870); S. Rep. No. 708, 46th Cong., 2nd Sess. (1880); S. Rep. No. 1278, 49th Cong., 1st Sess. (1886); S. Rep. No. 2710, 50th Cong., 2nd Sess. (1889); S. Rep. No. 1336, 54th Cong., 2nd Sess. (1897); S. Rep. No. 938, 63rd Cong., 3rd Sess. (1915); S. Rep. No. 984, 63rd Cong., 3rd Sess. (1915); S. Rep. No. 1100, 72nd Cong., 2nd Sess. (1933); S. Rep. No. 2034, 81st Cong., 2nd Sess. (1950); S. Rep. No. 542, 82nd Cong., 1st Sess. (1951); S. Rep. No. 8, 83rd Cong., 1st Sess. (1953); (Reports of special Senate investigations into Indian affairs).

³ An investigation of this scope requires a thorough examination of all important parties, including private industry, tribal governments and the federal agencies that affect American Indians.

tee is cognizant of its unprecedented role and the extraordinary trust the Senate has thus invented in it.

The allegations and findings over the past two decades fully justify that trust. The state of the federal government's relationship to American Indians is dismal. Study after study has not only documented pervasive poverty and despair, but hopelessness with the federal government's programs, oversight and lack of constructive responsibility.⁴ In particular, after the creation of the Inspector General for the Department of Interior in 1978, countless cases of fraud, waste, corruption and mismanagement have been documented in a serious catalog of potential abuse. Even more telling, however, has been the Executive and Congressional failure to fully address these findings. With the establishment of the Special Committee, the Senate has emphatically decided to neglect these issues no more. The mandate for a comprehensive investigation has been passed to the Special Committee. It is a heavy responsibility from which the Special Committee will not shirk in uncovering and following every fact no matter where, or to whom, it will lead.

This Report constitutes a preliminary look at the nature of some of the allegations the Special Committee was entrusted to investigate. The gathering and analysis of the existing allegations by itself has been a formidable task. Yet the Special Committee has not contented itself with this process alone and is well into its own independent investigation.⁵ While no exact timetable can now be set, it is the hope of the Special Committee that it will be able to present some of its findings during public hearings in the near future.

This Report is made to the Rules Committee of the Senate to afford the Senate an opportunity to gauge the progress of the Special Committee and to supplement its resources. Part One of the Report outlines the work the Special Committee has conducted to date. Part Two sets forth some of the allegations the Special Committee has documented and intends to investigate further. Part Three presents an analysis of the Special Committee's budget and its request for a small amount of additional funds for the balance of the fiscal year until February 28, 1989.

The nature of the allegations presented in Part Two of this Report are indeed startling. From the inability of the federal government to fully account for royalties on Indian oil and gas to its failure adequately to monitor hard minerals and timber, the Indian's natural resources languish without a sufficient level of accountability. The federal government's remaining responsibilities in construction, housing, economic development, law enforcement

⁴ See e.g. Josephy, "The American Indian and the Bureau of Indian Affairs 1969: A Study With Recommendations" (1969); American Indian Policy Review Commission, Final Report (1977); Institute for the Development of Indian Law, "Indians and the U.S. Government" (1977); Gross, "Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy" (1978); Barsh, "The BIA Reorganization of 1978: A Lesson in Bureaucratic Self-Defense" (1979); U.S. Cong. Senate Select Committee on Indian Affairs, "Indian Trust Fund Oversight" (1980); Presidential Commission on Indian Reservation Economies, "Report and Recommendations to the President of the United States" (1984).

⁵ Because of the secrecy and planning necessary to conduct a successful investigation and preliminary, tentative character of the Special Committee's findings to date, only the significant past allegations unearthed by others are presented in this Report. By presenting these allegations, the Special Committee neither endorses or vouches for the accuracy of the allegations presented.

and other programs may have likewise been saddled with fraud, corruption, waste, neglect, and an inability to afford effective oversight and assistance. Part of the responsibility no doubt lies with Congress, which has failed to provide clear and enforceable legislative direction. While the overall picture is indeed bleak, the Special Committee has discerned certain promising signs of hope. All the allegations and problems, however, must be thoroughly investigated to build the kind of complete foundation needed for serious legislative reform, the kind of reform upon which any lasting progress must necessarily rest.

The Special Committee hopes this Report provides a small measure of insight into the difficult process we have begun and only been able to undertake with the Senate's unqualified support.

Respectfully submitted,

DENNIS DECONCINI,

Chairman.

JOHN MCCAIN,

Cochairman.

THOMAS DASCHLE.

PART ONE: WORK OF THE SPECIAL COMMITTEE ON INVESTIGATIONS TO DATE

The Special Committee has analyzed its formidable investigative task and devised an overall plan to implement the investigation. The first assessment made was the nature of the staff required to conduct the investigation. Because of the complex allegations of pervasive fraud and corruption, the Special Committee made a decision to hire professional investigators. Experienced federal prosecutors and Congressional investigators were recruited, along with other attorneys highly skilled in investigations. To uncover the facts in the natural resource area, accountants and attorneys expert in natural resources were also hired. Lastly, to complement these professionals, those experienced in Indian law and problems were recruited.

After the staff was carefully hired and organized by May, 1988, the Special Committee formulated a comprehensive investigative plan. It had been the experience of both the members of the Special Committee and the professional staff that an investigation cannot succeed unless its overall needs and goals are clearly analyzed before the substantive investigation is begun. As a result, a plan was devised and the investigation itself divided into four phases.

In the first phase of the investigation, the Special Committee gathered the facts necessary to evaluate existing problems and identify potential targets for further intensive study. The second phase has been investigatory in character, interviewing and deposing fact witnesses throughout the country and subpoenaing and collecting all relevant documents and other evidence. Only after the investigatory process thoroughly runs its course and pursues every promising lead, can the facts be sifted and coherently presented in the third phase of the investigation, namely a full series of public hearings. After the investigatory hearings, the Special Committee will enter the fourth and final phase of its work: the issuance of a final report and possibly additional hearings before legislative recommendations are made to the Congress.

In March, 1988, the Special Committee began its first phase of the investigation by seeking to gain a thorough foundation in the workings of the Department of the Interior and its administration as it affects individual Indians and tribes. Documents were sought from the Department, in particular from the Inspector General, and over eight briefings were given by Departmental personnel, including the Assistant Secretary for Indian Affairs, the Solicitor, the Inspector General, the Deputy Assistant Secretary for Indian Affairs, the Deputy Assistant Secretary for Land and Minerals, other high officials from the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Minerals Management Service (MMS), as well as individual meetings with Secretary Hodel. The briefings

covered, among other topics, the general structure and organization of the Department of the Interior and its relevant divisions and branches, particularly the BIA; the administration of the oil and gas, solid minerals, and timber leasing and royalty programs; the role and operations of the Solicitor's Office; and the Department's trust responsibility in general. In addition, over 178,000 documents were received from the Department of the Interior on a wide variety of topics concerning American Indians and have virtually all been analyzed by the Special Committee staff.⁶

Because federal programs in almost every executive branch of the government besides the Department of the Interior affect Indians, from the Departments of Defense, Justice and Health and Human Services to Housing and Urban Development, Agriculture and the FBI, the Special Committee sought relevant documents and briefings from these departments and agencies as well. In all, a complete series of briefings by high officials in these departments were held and over 63,000 documents were collected and analyzed by the Special Committee staff.

Another important component in the Special Committee's first phase work was to obtain the full participation of Indian tribal governments and leaders. The Special Committee leadership spoke to various tribal groups and wrote letters to officials of every federally recognized tribe or Alaskan native group in the country, informing them of our investigation, soliciting their input and guidance, and requesting their assistance.

Not content with this formal outreach alone, Special Committee attorneys and investigators have visited some 43 reservations and tribal offices, covering most of the Indian communities in Arizona, New Mexico, Utah, Oregon, Washington, Montana, North and South Dakota and Oklahoma. Special Committee attorneys and investigators have met tribal chairmen and other tribal officials, attended tribal council sessions and tribal hearings, as well as spoken to many tribal members individually. All these meetings, interviews and contacts were used to gather information about issues of concern to individual Indians and tribes, as well as to locate potential witnesses and evidence.

The Special Committee has also recently embarked upon its second phase of work, identifying potential witnesses, collecting and subpoenaing documents and other relevant evidence, and continuing to develop its full range of contacts. Confidential, off-the-record information relayed to the Special Committee has been essential to this process and facilitated by the assistance of the BIA itself.⁷

In fact, the Special Committee staff have conducted more than 278 interviews to date, with present and former officials and employees from the government (including BIA, HUD, MMS, BLM,

⁶ Due to the large volume of documents sought from the Department of Interior, and the fact that certain materials may be held at any of the BIA's widely scattered agency and area offices, the BIA has not been able to timely respond to all of the Special Committee's requests. In addition, the BIA has not been able to furnish the Special Committee with all information sought by the requests.

⁷ On June 14, 1988, at the Special Committee's request, Assistant Secretary for Indian Affairs Ross Swimmer issued a memorandum to all BIA employees urging them to cooperate on a confidential basis with the Special Committee's investigation.

HHS, etc.); Indian tribal officials and leaders; federal contractors; housing, construction and other companies; oil, gas, hard mineral, timber and other natural resource companies; law enforcement officials (FBI, Inspector Generals, U.S. Attorneys); state officials and other interested Indian and non-Indian leaders and citizens. The Special Committee has interviewed a wide variety of knowledgeable people, yet this process is still in its early stage. Countless interviews remain to be conducted and the deposition process itself has just begun.

In addition to interviews, the Special Committee has also sought to obtain all relevant documents and other evidence. As a result, the Special Committee has secured over 488,000 documents to date. As outlined above, approximately 241,000 documents have been received from numerous government agencies, including the Departments of Interior, Education, Commerce, Justice, Health and Human Services, Housing and Urban Development and Agriculture, among others. We also have received governmental documents from the General Accounting Office, Congressional committees and several United States Attorneys' offices. Tribes, tribal groups, and individual Indians have provided still other documents. All of these documents have been provided pursuant to request by the Special Committee.

Moreover, the Special Committee has recently begun its task of obtaining relevant evidence by legal compulsion. To date, the Special Committee has subpoenaed relevant documents and evidence from over 130 individuals and companies. Those subpoenaed, primarily in private industry, include large major and smaller independent natural resource companies, federal contractors, construction companies, insurance companies, surety companies and other private businesses.⁸ Thus far, these subpoenas have generated the production of more than 246,000 documents. In addition, the Special Committee has subpoenaed numerous individuals and companies to provide testimony in connection with the documents produced.

As the Special Committee moves into its deposition phase, it does so fully armed with voluminous documentary evidence. The nature of collecting this evidence, however, always results in more questions, as well as evidence and subjects which need to be further subpoenaed. The Special Committee therefore expects to quicken its pace of subpoenas during the next several months, while at the same time intensifying its deposition schedule in advance of extensive public hearings.

⁸ The private industry companies and individuals were largely selected because of their involvement with American Indians as part of a general investigation. Accordingly, the identity of these parties is not being disclosed at this time.

PART TWO: THE FEDERAL GOVERNMENT'S RELATIONSHIP WITH INDIANS

A. ALLEGED PROBLEMS IN FEDERAL PROGRAMS OTHER THAN NATURAL RESOURCES

This section of the Report discusses alleged problems in the relationship between the federal government and the American Indian community other than in the administration of natural resources which is addressed in Part B *infra*. This part focuses on some of the problems claimed to exist in the federal administration of Indian programs and addresses, in the context of that principal focus, the role and conduct of federal agencies, certain business enterprises and, of course, Indian tribes.

1. Contracting and Procurement

Contracting and procurement are activities which consume a significant percentage of the BIA's total budget.⁹ The Inspector General's Office has studied this area intensely over the past three years, having issued no less than fourteen reports on contracting and procurement. The reports level serious charges against the BIA's administration of these activities, particularly in the areas of construction contracting and supply procurement. The litany of alleged abuses and violations of procedure include: (a) the failure to let contracts on a competitive basis; (b) the improper awarding of contracts to ineligible Indian contractors or "front" companies; (c) the unauthorized allowance of contract modifications; (d) the failure properly to account for funds spent on construction and other projects; and (e) the improper obligation of funds.¹⁰

a. Sole-Source Contracting

The BIA's governing regulations provide that unless certain extraordinary conditions exist, it must solicit competitive bids on all contracts and supply requisitions over a certain amount. Only if the contracting officer determines that there are no other contractors capable of performing the work satisfactorily may he award the contract to a single contractor through "sole-source" contracting. In that event, the contracting officer may negotiate the purchase with the contractor but the officer must justify, in a written memorandum, the decision not to bid the contract competitively.¹¹

⁹ The Inspector General reported that in 1984, for example, the total volume of all contracts awarded by the BIA exceeded \$424 million representing over one third of BIA's total budget. Summary Report: Bureau of Indian Affairs—Procurement, W-AI-BIA-35-84 (hereinafter referred to as "Summary Report"), at p. 1.

¹⁰ Former Inspector General Richard Mulberry apparently believed the problems to be so serious that he wrote, in reference to the procurement area, "[i]t is a dangerous situation". Review of Selected Activities Albuquerque Area Office, C-IA-BIA-22-83, at p. 1.

¹¹ 41 CFR 1-1, 301-1; 19 BIAM Supplemental 2.1.1.

The Arizona Republic reported in its series that a large percentage of the contracts administered by the BIA were awarded on a non-competitive basis, without adequate justification.¹² The Inspector General's office has reached a similar conclusion. Its audit of the Albuquerque Area Office, for example, concluded that 24 of 117 contracts studied were awarded on a sole-source basis without adequate justification. At least some of the contracts were awarded to one company without any competitive bidding, despite the contracting officer's knowledge that other adequate competitors were available to bid for the project.¹³

In reviewing the Navajo Area Office, the I.G. found that competition for another twenty-three awards, totalling \$4 million, was restricted due to the failure to follow requirements necessary to provide fully competitive bidding.¹⁴ And the I.G. concluded in its Summary Report that "justifications [for going sole-source] were generally not prepared or were insufficient to support the elimination of competition."¹⁵

Procurement of goods and services has been subject to the same criticisms:

Most sole-source procurements were unnecessary. Program personnel use sole-source requests to purchase goods and services from their favorite contractors or vendors.¹⁶

Where the BIA has awarded contracts to a single source, it has allegedly often failed to implement the procedural safeguards (e.g., cost comparison and arm's length negotiations) intended to ensure that the government receives acceptable value for its money.¹⁷ According to these reports, in many cases there were literally no negotiations over price terms. Indeed, contractor's proposals were often simply accepted as written.¹⁸

Even when the BIA lets a contract on a so-called competitive basis, there may be serious problems in the processing of the bids. In its review of the Billings Area Office, for example, the Inspector General found "significant procedural deficiencies" in 78 percent of the competitively negotiated contracts.¹⁹

One of the oft-cited procedural deficiencies is the failure, at many offices, to publish requests for bids in required publications. Indeed, the Inspector General's Summary Report claims that a number of contracts had been processed long after work on the projects had been started. In those cases the effective sole-source justification was back-dated to precede the date that work had commenced.²⁰ The report explained why back-dating might occur:

¹² The Arizona Republic, Oct. 4, 1987, at p. 8.

¹³ Review of Selected Administrative Activities: Albuquerque Area Office, Bureau of Indian Affairs, C-IA-BIA-22-83 (hereinafter referred to as "Albuquerque Area Office Review"), at p. 3.

¹⁴ Review of Procurement Activities: Navajo Area Office, Bureau of Indian Affairs, C-IA-BIA-09-02, at p. 5.

¹⁵ Summary Report, at p. 9.

¹⁶ Administrative Service Center: Review of Procurement Activities, C-IA-BIA-34-34 (hereinafter referred to as "Administrative Service Center Review"), at p. 3.

¹⁷ The review of the Albuquerque Area Office states that cost and price analysis were either not performed or were perfunctory. No preaward audits were requested. The report notes further that the negotiation process was not adequately documented. Albuquerque Area Office Review, at p. 3.

¹⁸ Id., at p. 12.

¹⁹ Review of Procurement Activities, Billings Area Office, at p. 11.

²⁰ Summary Report, at p. 8.

"Since program officers had already committed the government, there was no reason to advertise, and contracting officers simply processed paperwork to make the transaction look proper".²¹

Various reports also claim that as a direct consequence of the breakdown in contracting procedure, the federal government has overpaid on its purchases. One contract award was apparently given to a contractor despite the fact that its proposed bid was 300 percent higher than that of an equally qualified competitor.²² In one study alone, the I.G. determined that the federal government could have saved \$1.2 million on 21 contracts if "meaningful cost and price negotiations had occurred."²³

2. Alleged Abuses of Buy Indian Requirements

The Buy Indian Act and other similar legislative provisions were enacted to encourage the participation of legitimate Indian-owned firms in certain government contracts. A number of different sources, including the Inspector General and The Arizona Republic, claim that, at a minimum, the Buy Indian program is not operating as Congress intended.

The Buy Indian Act generally requires that the BIA and certain other agencies attempt to contract with Indian-owned firms for the performance of Indian contracts.²⁴ Implementing regulations define what is meant by Indian ownership and prescribe further the percentage of work that may be performed by non-Indian subcontractors.²⁵ Under the requirements, the Indian-owned firms are to file documents certifying that they qualify as Indian-owned. The I.G.'s office and The Arizona Republic have alleged that the BIA has awarded contracts to Indian brokers or "fronts", companies that are set up or maintained to procure Indian contracts for non-Indian companies and that funnel a substantial portion of the profits and assets to their non-Indian backing companies.²⁶

The Inspector General's reports have detailed many instances where Indian contractors, purporting to be Indian-owned firms, did not qualify as Indian firms because they were owned or controlled by outside interests.²⁷

Other reports describe instances where an "Indian" contractor was paid a fee for obtaining Indian contracts that were, in fact, substantially performed by the non-Indian company. The Inspector General noted that the Aberdeen Area Office, for example, "uses Buy Indian Act authority . . . under circumstances where the Indian contractor is simply acting as a broker and subcontracting

²¹ *Id.*, at p. 18.

²² Administrative Service Center, at p. 14.

²³ Summary Report, at p. 15.

²⁴ The Buy Indian Act (25 U.S.C. 47) provides: "So far as may be practicable, Indian labor shall be employed, and the purchases of products of Indian industry may be made in open market at the discretion of the Secretary of the Interior."

Although the Act speaks in terms of Secretarial discretion, the stated requirements of the BIA, as reflected in the agency's policy memoranda, is to require use of Indian contractors wherever practicable. (See Buy Indian Act Eligibility for Contracts, 53 FR 1522, dated Jan. 20, 1988).

²⁵ See, e.g. Buy Indian Act Eligibility for Contracts, 53 FR 1522, dated Jan. 20, 1988.

²⁶ Review of Facility Construction Activities, C-IA-BIA-21-83 (hereinafter referred to as "Facility Construction Activities"), at p. 32; Buy Indian Brokerage Arrangements, Bureau of Indian Affairs, C-IA-BIA-17-84a (hereinafter referred to as "Buy Indian"), at p. 2; The Arizona Republic, Oct. 4, 1987, at p. 8 (finding that "a significant number of Buy Indian contracts have been fraudulent").

²⁷ See e.g., Review of Procurement Activities, Navajo Area Office, C-IA-BIA-09-82, at p.11.

all or substantially all of the work to a non-Indian firm."²⁸ Indeed, one report found that a several million dollar contract, awarded to an Indian front to perform school laundry services, was actually performed by a non-Indian firm.²⁹

In its Summary Report, the I.G. identified 73 Buy Indian contracts, totaling \$11.4 million, that were either awarded to ineligible firms or were awarded to firms which had subcontracted most or all of the work to non-Indian enterprises.³⁰ The facilities engineering staff and the Anadarko Area Office alone awarded twenty-five contracts, valued in excess of \$2 million, to a firm that did not qualify as Indian-owned and did not present any documentation certifying the company as Indian-owned and controlled.³¹ Certain BIA offices may have failed to police Buy Indian activity, even after being alerted to the existence of abuses in the program. A 1984 I.G. report states:

Not only was our report ignored when the Buy Indian contract was awarded, but the award was in violation of Bureau of Indian Affairs (BIA) directives and was costly.³²

The I.G. has concluded that the "implementation of BIA's Buy Indian policy has been poor and at times, appears counterproductive."³³

The BIA has recently proposed radically different Buy Indian regulations.³⁴ The proposed regulations, which change the standard necessary to qualify as Indian-owned and increase the percentage of work that may be subcontracted to non-Indian firms, have been criticized by some as legitimizing fronting arrangements.³⁵

3. Other Alleged Problems in Contracting

In addition to allegations concerning abuses in the sole-source and Buy Indian areas, there have been allegations of conflicts of interest and favoritism in the awarding of contracts, as well as the unauthorized expenditures of program funds by contracting officers. In one case, for example, it has been claimed that the decision of a contracting officer to award a contract to the lowest bidder was over-ridden by his superior who directed, without any apparent explanation, that the contract be awarded to the high bidder.³⁶ In another case, the agency's own cost estimate was increased by approximately \$100,000 to permit a firm to bid under the estimate.³⁷ One area review found evaluation deficiencies in seven of

²⁸ Review of Procurement Activities, Aberdeen Area Office, C-IA-BIA-15-83, at p. 2.

²⁹ Summary Report, at p. 14.

³⁰ Similarly, an office in the Aberdeen Area was found to have awarded a \$941,000 contract to an Indian firm operating as a front for a non-Indian construction firm. Summary Report, at pp. 5 and 16; *The Arizona Republic*, Oct. 4, 1987, at p. 8.

³¹ *Id.*, at p. 13.

³² Buy Indian Brokerage Arrangements, Bureau of Indian Affairs, C-IA-BIA-17-84a, at p. 1.

³³ Summary Report, at p. 5.

³⁴ See Proposed Regulations contained in Federal Register Vol. 53, No. 126, p. 24740 ff. The proposed regulations reduce to 51 percent the percentage required to qualify as Indian owned and increase to 85 percent the percentage of certain contracts that may be subcontracted to non-Indian firms.

³⁵ See Comments filed by Ed Danks, President, National Indian Contractors Association, dated July 27, 1988.

³⁶ Summary Report, at p. 8.

³⁷ Review of Procurement Activities: Minneapolis Area Office, Bureau of Indian Affairs, C-IA-BIA-31-84, (hereinafter referred to as "Minneapolis Area Office Review"), at p. 6.

the nine audited proposals. The deviations from proper procedures were so numerous and significant that the Inspector General's office concluded favoritism or bias was shown.³⁸ One of these contracts was awarded to a former BIA employee without proper justification and without properly ranking the competing contractors.³⁹

4. Facilities Management

The BIA Facilities Management Program, designed to provide for construction and maintenance of facilities on government property, has been subject to many of the same criticisms leveled against other programs.⁴⁰

The largest single component of the facilities management program is school construction and maintenance. The Inspector General's Office has reserved its strongest criticisms for this part of the program, claiming that: (a) the BIA may be building schools deemed unnecessary under the BIA's own standards; (b) the contracting offices for school construction often improperly refuse to use Indian contractors; (c) the BIA pays excessive amounts on projects designed or built with nonIndian firms; and (d) the workmanship on many projects is shoddy, making the conditions in these buildings hazardous.

On review of the school construction system, the Inspector General's Office concluded that Indian firms had been excluded from competing for architect and engineer contracts, despite the fact that many were well qualified and had, in fact, successfully performed other similar contracts. The administration of the Buy Indian Act programs was also questioned.⁴¹

5. Accounting/Finance

a. Tribal Trust Funds and Individual Indian Money Accounts

Central to the BIA's trust responsibility is the administration of the funds it holds in trust for tribes and individual Indians. The funds are held in two principal types of accounts: (1) Tribal Trust Funds; and (2) Individual Indian Money Accounts (IIMs).⁴²

Both the Inspector General's Office and The Arizona Republic have closely scrutinized the administration of these funds.⁴³ Their

³⁸ Summary Report, at p. 29.

³⁹ The administration of the small purchase procurements may suffer from other problems, in addition to those faced by the regular procurement program. The most serious complaint lodged against this program is that procurement personnel have divided large purchase orders into several smaller ones in order to circumvent the more stringent authorization procedures applicable to large purchases. Minneapolis Area Office Review, at p. 18.

⁴⁰ Indeed, the Inspector General has questioned the need for many educational facilities under these standards. In one case, the BIA was apparently pressured to spend \$6 million on a dormitory that did not have any water supply, rendering the facility useless.

⁴¹ *Id.*, at p. 30 (challenging the eligibility of many so-called Indian firms)

⁴² The BIA handles tribal trust funds for approximately 269 tribes. The money that is deposited in IIMs comes from the leasing and payment of royalties for the use of the land or natural resources owned by the individual Indian holder of the account. According to the last audit by the Inspector General's Office, the BIA reported a total balance of \$1.06 billion for these funds. DOI/IG Audit Report: Accounting Controls Over Tribal Trust Funds—Bureau of Indian Affairs, C-IA-BIA-24-83 (September 1983). DO/OIG Audit Report: Review of Individual Indian Money Accounts Administered by the Bureau of Indian Affairs, C-IA-BIA-25-84 (March 1986).

⁴³ The Inspector General has issued a major audit report reviewing the administration of the tribal trust funds in 1983. It also has issued one consolidated report in 1986 and seven individual agency and area offices audits since 1982 on the IIM System.

investigations have found BIA's management of these funds to be lacking, resulting in the potential loss of millions of dollars a year to account-holders and beneficiaries.⁴⁴ In addition, the I.G. has noted that so much information was either missing or inaccurate, it was virtually impossible to draw "any substantive conclusion" as to what monies were actually in the accounts.⁴⁵

Tribal trust funds are administered from several different BIA offices. The funds are collected in, and disbursed from, BIA's various field offices, while the accounting and investment functions are handled by the BIA Central Office in Albuquerque.

The Inspector General has criticized BIA's internal accounting systems, finding that its trust funds balances cannot be reconciled with the balances reported by the Department of Treasury.⁴⁶ The failure to balance accounts means that the BIA cannot determine how much cash is available for investment, and may have caused account holders to lose investment income. As the I.G. reported:

By not reconciling its tribal trust fund transactions and balances with Treasury and not reconciling its internal systems, BIA provides little assurance to anyone, including the tribes whose funds BIA is managing, that it is reporting and investing trust funds properly. In fact, BIA is reporting inaccurate fund balances to tribes, [and] overinvesting trust funds.⁴⁷

In addition, due to these accounting inaccuracies, the BIA has caused tribal funds to go unprotected against loss from bank failure.⁴⁸ In sum, the BIA's failure "to reconcile the systems and maintain internal consistency has created large unexplainable discrepancies which ultimately have destroyed confidence in the validity of the information produced."⁴⁹

The IIM system allegedly suffers from similar problems. The controlling summary account records, maintained by the Central Office in Albuquerque, cannot be squared with individual account records maintained in the agency and area offices.⁵⁰

⁴⁴ DOI/OIG Audit Report: Review of Individual Indian Money Accounts Administered by the Bureau of Indian Affairs, C-IA-BIA-25-84 (March 1986); DOI/OIG Audit Report: Accounting Controls Over Tribal Trust Funds—Bureau of Indian Affairs, C-IA-BIA-24-83 (September 1983); The Arizona Republic: Fraud in Indian Country, Oct. 4, 1987, at p. 8.

⁴⁵ DOI/OIG Audit Report: Review of Individual Indian Money Accounts Administered by the Bureau of Indian Affairs (Consolidated Report), C-IA-BIA-25-85 (March 1986), at p. 11.

⁴⁶ The Inspector General found that the Treasury's trust fund balance was \$75 million more than that recorded by the BIA's Finance System. DOI/OIG Audit Report: Accounting Controls Over Tribal Trust Funds—Bureau of Indian Affairs, C-IA-BIA-24-83 (September 1983), at pp. 10-12.

⁴⁷ DOI/OIG Audit Report: Accounting Controls Over Tribal Trust Funds—Bureau of Indian Affairs, C-IA-BIA-24-83 (September 1983), at pp. 12, 13-14.

⁴⁸ The Inspector General cites two examples where tribal monies were invested in banks that failed. Due to simple errors in the accounting system, these monies had been invested in amounts that exceeded the insurance limit, thus exposing the tribe to loss of their investment or interest. DOI/OIG Audit Report: Accounting Controls Over Tribal Trust Funds—Bureau of Indian Affairs, C-IA-BIA-24-83 (September 1983) at pp. 14-15.

⁴⁹ DOI/OIG Audit Report: Accounting Controls Over Tribal Trust Funds—Bureau of Indian Affairs, C-IA-BIA-24-83, September 1983, at p. 16.

⁵⁰ For example, the records of one agency office had an account balance of \$42 million more than that which the Albuquerque office credited to it. DOI/OIG Audit: Review of Individual Indian Money Accounts Administered by BIA, C-IA-BIA-25-84, March 1986, at p. 4. Moreover, interest is also being lost on Indian accounts because of errors in computation. During one audit period, the Inspector General found underpayments of \$603,000 and overpayments of \$346,000 at four agency offices. DOI/OIG Audit Report: Review of Individual Indian Money Accounts Administered by BIA, C-IA-BIA-25-84, (March 1986), at pp. 5, 29-32.

In addition to pervasive problems relating to the failure to reconcile accounts, the Inspector General found problems peculiar to the IIM system. Lack of internal controls in BIA agency offices has led to funds being "embezzled, misappropriated, or unaccounted for."⁵¹ Finally, the I.G. has chronicled the BIA's repeated failure to ensure that those entitled to the funds in the IIM accounts had actually received them. IIM monies often have not reached their rightful owner either because the BIA claims that it cannot locate the holder of the account or because it allows the funds in a supervised account to be imprudently disbursed.⁵²

b. Loan Programs and Debt Collection

It has also been charged that the BIA has failed to properly administer its loan programs. For example, one I.G. report reported that the average rate of delinquency for loans administered by three area offices was 31 percent, meaning that almost one in three persons had failed to make timely payments on his loans.⁵³ The Arizona Republic reported that the BIA often did not collect payment before the five-year statute of limitations had expired.⁵⁴

The BIA's debt collection problems allegedly go beyond its difficulties in collecting on delinquent or past due loans. The BIA is apparently owed significant amounts arising from many of its activities, including unallowable costs on contracts let by the BIA, unpaid contract and travel advances and payroll overpayments.⁵⁵

The charge has also been made that the BIA cannot properly determine the amount of its outstanding debt. The Inspector General found, for example, that on four projects there was a \$17 million difference between the general ledger and subsidiary records reflecting accounts receivable.⁵⁶

6. Indian Housing Programs

The Department of Housing and Urban Development ("HUD") is the federal agency chiefly responsible for the administration of Indian housing programs. HUD allocated over \$260 million for Indian housing and community development in 1986. By contrast, the BIA spent roughly \$22 million on its entire Housing Improvement Program in the following year.⁵⁷

⁵¹ DOI/OIG Audit: Review of Individual Indian Money Accounts Administered by BIA, C-IA-BIA-25-84 (March 1986), at pp. 42-47 (finding complete lack of proper documentation; failure to separate duties among employees; and the existence of uninventoried and potentially negotiable blank checks).

⁵² DOI/OIG Audit Report: Review of Individual Indian Money Accounts Administered by the Bureau of Indian Affairs (Consolidated Report), C-IA-BIA-25-84 (March 1986), at pp. 17-28, 39-41.

⁵³ Since the loans are being extended to persons in distressed conditions who cannot qualify for traditional loans, it may not be surprising that the loan recipients fail to make timely payments. On the other hand, there may be other more disturbing explanations for the high rate of delinquency—including favoritism to individuals or conflict-of-interest by those responsible for administering the loan program. See Review of Loan Programs Administered by BIA, at p. 23.

⁵⁴ The Arizona Republic, October 4, 1987, at p. 8.

⁵⁵ Debt Collection—Bureau of Indian Affairs, C-IA-BIA-43-85, May 1987, p. 1. In one month of 1986, for example, \$18.2 million of \$20.2 million in outstanding debt was claimed to have been delinquent. *Id.*, at p. 6.

⁵⁶ Operation and Maintenance Assessments of Indian Irrigation Projects—Bureau of Indian Affairs, W-IA-BIA-12-86, at p. 3-4.

⁵⁷ Only one housing program, the Housing Improvement Program ("HIP") is administered by the BIA. Because that program is very small by comparison to the many HUD programs, a discussion of allegations concerning HIP is omitted.

The federal government's administration of HUD Indian housing programs has been the target of criticisms from many different quarters. These sources have pointed to instances of fraud at the local level of administration and misuse of housing funds at a regional level. In addition, they claim that the housing construction is slow, over-priced and shoddy.

In 1986, an audit of the development and management of Indian housing performed by the HUD Inspector General revealed that contractors averaged 40 months to construct a new house under HUD programs. In contrast, the national average for constructing a new home is 6.2 months.⁵⁸ According to the 1986 report, due to interest and other costs, the delay in construction translates into an annual loss of approximately \$40 million, or 600 new units.⁵⁹

The same audit also questioned the propriety of funding decisions by HUD regional offices. Regional offices were accused of authorizing questionable expenditures without adequate documentation or other controls. The audit questioned approximately \$19 million in expenses which lacked adequate documentation or were not properly authorized. The Phoenix regional office, for example, improperly approved \$7.8 million in housing development funds for routine repairs which did not qualify as housing development.⁶⁰

In addition to problems at the HUD regional office level, The Arizona Republic detailed abuses by tribal Indian Housing Authorities ("IHA's") in the distribution of federal funds.⁶¹ The Arizona Republic reported that tribal government officials and housing officials were living in new or subsidized housing, while other more needy tribal members went unassisted.⁶² IHA's have also been cited for serious mismanagement. A 1986 audit into the Navajo housing authority listed common problems. Those problems stemmed from "not adhering to existing policies, procedures and regulations; the absence of adequate financial or accounting controls in several areas; and the need for better policy direction and guidance from [the governing board] and more effective program administration by management personnel."⁶³

The HUD Inspector General also found, in a March, 1988 report, evidence of possibly criminal conduct at 21 of the IHA's reviewed. The HUD report focused on the area of IHA cash accounts and discovered, in that one area alone, a repeated pattern of misappropriation and embezzlement of funds.⁶⁴

HUD contracts have been awarded to illegitimate contractors, incapable of providing quality work. The 1986 HUD report and The Arizona Republic mention examples of poorly constructed units.⁶⁵ Unscrupulous contractors are claimed to have been partially responsible for such construction, and also for abandoning HUD projects before completion.⁶⁶

⁵⁸ Figure provided by the National Association of Home Builders.

⁵⁹ Report on Audit of the Development and Management of Indian Housing (hereinafter referred to as "Management Report"), 86-TS-101-0018, June 19, 1986, at p. 2.

⁶⁰ *Id.*, at p. 6.

⁶¹ Arizona Republic, "New Homes Just as Shoddy as Old", Oct. 6, 1987, at p. 14.

⁶² *Id.*, at p. 14.

⁶³ "Navajo Housing Authority", 86-SF-240-010, Feb. 12, 1986, at p. 2.

⁶⁴ Report on Nationwide Review of PHAs and IHAs Misappropriation and Misuse of Cash and Other Assets, 88-IS-101-006 and accompanying work papers.

⁶⁵ Management Report, at pp. 21 and 22; The Arizona Republic, Oct. 6, 1987, at pp. 13-15.

⁶⁶ See Arizona Republic, Oct. 6, 1987 at pp. 13-15.

7. Law Enforcement

As raised in The Arizona Republic series, the failure of law enforcement on Indian reservations and trust lands is one of the principal problems in the federal government's relationship with American Indians. Law enforcement is seriously lacking in Indian country, according to The Arizona Republic, due to both the absence of appropriate criminal statutes and the inability of law enforcement to prosecute criminal conduct, particularly where it touches tribal and other governmental officials.

A review of the FBI and I.G.'s cases confirm that federal laws and resources may be insufficient to ensure accountability.⁶⁷ While in late 1986 Congress sought to address these deficiencies by amending the federal criminal code to apply to the bribery of Indian tribal officials (18 U.S.C. Section 666), that statute was poorly drafted and has been of little or no help in prosecuting related crimes.⁶⁸

Moreover, numerous law enforcement officials find this inadequate statutory framework to be the largest single impediment to law enforcement in Indian country.⁶⁹ In fact, many cases involving bribes, grafts, kickbacks, embezzlement, gratuities and substantial conflict of interest have failed in their prosecution because Congress has not enacted adequate legislation.⁷⁰ One U.S. Attorney has stated that:

Problems in the prosecution of crimes involving federal funds to Indian tribes . . . center around the lack of prosecutive alternatives for conflict of interest and acceptance of gratuities . . . [Because] there is no clear statutory prohibition against self-dealing and the receipt of sums by tribal officials from those doing business with the tribe, current laws do not appropriately address conduct which should be criminal.⁷¹

As a result, the Special Committee believes that further examination of these allegations may expose the deficiencies in federal and state law necessary to prosecute serious corruption in Indian country.⁷²

B. ALLEGED PROBLEMS IN FEDERAL PROGRAMS INVOLVING INDIANS AND NATURAL RESOURCES

The other major subject of the Special Committee's investigation focuses on the Department's management of natural resources held

⁶⁷ See e.g., DOI/OIG, 4 VI-117; DOI/OIG, 6 VI-134; DOI/OIG, 4 VI-113; DOI/OIG, 5 VI-007 and cases transmitted to the Special Committee by FBI Director Sessions on August 25, 1988.

⁶⁸ See *U.S. v. Jackowe*, 651 F.Supp. 1035 (S.D.N.Y. 1987) (statute held inapplicable to receipt of gratuities, a necessary lesser-included offense for effective corruption prosecution).

⁶⁹ Special Committee staff have interviewed U.S. Attorneys, the FBI's Director of Investigations, various Inspector Generals, other law enforcement officials and all have pointed to the lack of criminal statutes as the principal problem. Several Indian tribal leaders have identified the same problem.

⁷⁰ See e.g., *U.S. v. Tonry*, 837 F.2d 1281 (5th Cir. 1988) (Even though Tribal Chairman was bribed over \$25,000 to sign a bingo contract, no federal criminal statute applied).

⁷¹ Letter from U.S. Attorney, Western District of Oklahoma of Sept. 2, 1988.

⁷² See *Pueblo of Santa Ana v. Hodel*, 663 F.Supp. 1300 (D.D.C. 1987) (While the Assimilative Crimes Act applying state criminal law to federal enclaves has routinely been held by courts to cover Indian reservations, Congress should reconsider whether such a blanket application is consistent with prevailing federal policies of self-determination).

in trust for Indian tribes and individual Indian allottees.⁷³ As a central part of its trust responsibility, the Department of the Interior is entrusted with assuring the protection of Indian property, guaranteeing that Indian owners of natural resources receive full and fair payment while conserving their lands against unfair exploitation.

The first section of this part addresses problems in the administration of Indian oil and gas leases; the second and third sections deal with the administration of hard minerals and timber programs, respectively, programs that while less studied in the past, collectively account for the majority of monies paid to Indians on natural resources.

1. Oil and Gas

Over the past 30 years, the Department of the Interior's management of the Indian oil and gas leases has been criticized from many quarters.⁷⁴

Virtually all of the studies conducted during that period—including those performed by the GAO, the Congress, the Inspector General and specially created task forces—have found serious deficiencies in the Department's administration of oil and gas resources.⁷⁵ Both these studies and a recent series of investigative newspaper reports allege that the Department has: (1) failed to safeguard Indian oil and gas properties against wholesale theft and against gross under-reporting of production volume by industry; (2) left Indian properties unprotected against drainage; (3) failed to perform necessary audits; and (4) employed a product valuation method so complicated and difficult to administer that Indian owners cannot be assured of fair compensation for the use of their lands.

a. Production Verification for Oil and Gas Resources on Indian Land

In order to ensure that the correct amount of royalties are being paid on oil and gas production, the government must be able to verify the volume of the product taken from Indian lands, since the product volume determines, in large part, the amount of royalties to be paid. Critics of the program charge that the Department of the Interior does not adequately monitor or verify product volume and has failed to protect against theft of the product from the Indian lands.⁷⁶ These sources have complained that the Department conducts far too few on-site inspections and has not taken other measures necessary to properly secure Indian properties against theft. The Inspector General has concluded that under the

⁷³ See Appendix A to this Report for a detailed summary of (1) the administrative structure of this program, and (2) the myriad reviews to which it has been subjected.

⁷⁴ Oil and gas production in Indian land totalled \$1.9 billion in income between 1973 and 1985. In 1987, for example, oil and gas royalties on Indian leases was estimated to have been at least \$127 million. MMS Report of Royalties on Indian Leases, Calendar Year 1987 (April 1988), at p. 2943.

⁷⁵ The focus of these studies has varied in scope and purpose. See Appendix A for a further description.

⁷⁶ DOI/OIG Audit Report: Review of BLM's Inspection and Enforcement Program, C-LM-BLM-10-85 (June 1986), at p. 3.

present system, "BLM cannot ensure that oil is not being improperly removed from . . . Indian lease sites." ⁷⁷

In addition, since the Department performs few, if any, independent verifications of production figures and simply accepts the oil company's data, the government cannot be certain that Indian owners are not being cheated through under-reporting by the companies.⁷⁸ The Inspector General has identified this failure as a major weakness in the oil and gas lease program:

BLM relies heavily on operator integrity in reporting of oil and gas produced and sold on public lands without independently verifying the data. This is a serious weakness in BLM's system of internal controls. *As a result, BLM can provide no assurance that accidental or deliberate misstatements of production and/or sales are not occurring.* ⁷⁹

Moreover, the Department does not compare actual production and sales figures provided by the royalty payor with the data reported by the operator.⁸⁰ By not performing on-site inspections, independent verifications or comparisons of data production figures, the Department has allegedly failed to "meet the principal objective of FOGPMA,⁸¹ which is to ensure accountability over oil and gas produced from public lands."⁸²

A related problem is the difficulty to calculate accurately the precise value of Indian oil and gas royalties. The inability to identify the point of sale or determine which production or other costs should be borne by the Indian mineral owner, make proper valuation difficult to set.⁸³

*b. Drainage*⁸⁴

As part of its trust responsibility, the federal government must protect Indian-owned oil and gas properties from unauthorized or illegal drainage. The Inspector General has evaluated the Department's effectiveness in protecting federal and Indian lands from drainage of oil and gas, and has concluded that the BLM has failed to take sufficient action to guard against unauthorized drainage.⁸⁵

The I.G. has charged that the Department has not committed adequate resources to the drainage protection program and that the program has been given a low priority.⁸⁶ Indeed, at the time of

⁷⁷ Id.

⁷⁸ The I.G. has claimed that the few verifications performed by the BLM are inadequate since they accomplish little more than simply determining whether the oil company's equipment is working properly. Id., at 9.

⁷⁹ Id at 12 (emphasis added).

⁸⁰ Id at 3.

⁸¹ Federal Oil and Gas Royalty Management Act, Public Law 97-451.

⁸² Id.

⁸³ The Department has issued regulations, effective Mar. 1, 1988, which attempt to address problems in the area of product valuation. See Appendix A, *infra*.

⁸⁴ Drainage is the migration of oil and gas in a reservoir beneath one or more parcels of land, due to the reduction of pressure caused by a producing well which penetrated the reservoir. Since, the "non-producing" land is literally being drained of its value, federal regulations require the lessee of Indian lands being drained to either drill a protective well or pay compensatory royalties to the owner of the drained resources.

⁸⁵ DOI/OIG Audit Report: Drainage Protection Program, Bureau of Land Management, C-LM-BLM-16-86(B) (November 1986), at p.4.

⁸⁶ The I.G. found that, in the states it reviewed, only 2 percent of the total program funds had been allocated to the drainage program. Id., at p.4.

the audit, a total of nearly 8,400 drainage cases, many of which affect Indians, had not been acted upon. As a result of the Department's failure to police this area, Indian mineral owners allegedly have lost, and may continue to lose, substantial funds caused by the drainage of their properties.⁸⁷

c. Auditing

Since the Department does not regularly undertake independent testing or other methods of verifying industry records, the performance (or threat of performance) of an audit represents the only check on the system.⁸⁸ The audit is intended to trace the development of the lease from production of the resource, through to its sale by the operators and the eventual payment, collection, disbursement of the royalties.⁸⁹

The audit program has been criticized by several sources. The Inspector General, for example, has charged that (1) audits are performed too infrequently to properly ensure compliance or discourage companies from under-reporting; and (2) that serious deficiencies in record-keeping and in the administration of the program prevent any meaningful review.⁹⁰

In assessing the audit function, the Inspector General found that the Department was able to audit only two percent of Indian and federal leases, a percentage called "inadequate" to ensure full compliance.⁹¹ In addition, the I.G. found that instead of auditing a representative sample of the leases to help identify possible underpayments, the Department spent a substantial part of its resources, thirty-eight percent, in auditing the claims of *overpayment* made by the companies.⁹² Moreover, the Department has not kept to its plan of auditing Indian (and other federal) leases on a six-year cycle and has failed to properly allocate its audit resources according to the revenues collected on the resources.⁹³

Finally, there are allegedly structural reasons why the audit system has been overtaxed and cannot perform the task of enforcing compliance. The data systems maintained by the MMS and BLM are not easily compatible. As a result, MMS cannot readily match BLM's production data against the sales volumes figures reported to it by the industry, and must draw from several different sources when performing an audit.⁹⁴

d. Explanation of Payments

In 1984, the House Committee on Interior and Insular Affairs complained that the Department was not consistently issuing the FOGRMA mandated reports on Indian royalty collections and that the reports provided were totally inadequate. As such, Indian

⁸⁷ Id.

⁸⁸ The audits are performed by MMS. See Appendix A for a fuller description of the audits and royalty accounting.

⁸⁹ Mission Accomplishment Royalty Compliance Division, Royalty Management Program, Minerals Management Service, E-LM-MMS-07-87E, at p. 3.

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

⁹³ Id. at p. 4.

⁹⁴ The Department has indicated that it is working on a system that will centralize the collection of data to address this problem.

owners could not satisfy themselves of the correctness of royalty payments or even determine the basis on which royalty payments had been made.⁹⁵

2. Solid Minerals

Many solid or "hard" minerals, including coal, phosphates, copper, uranium, sandstone and gravel, are now being extracted from Indian lands. Based on MMS data, payments to Indians from solid mineral leases represented approximately 40 to 50 percent of the estimated total royalties and rentals from all natural resources, except timber, collected from Indian lands in 1987.⁹⁶ Indeed, for calendar year 1987, three of the top four revenue producing leases on Indian land reporting to MMS were solid mineral leases.

As with oil and gas, responsibility for leasing Indian lands for the purpose of mining or extracting solid minerals rests with the Department of Interior. The Department's overall management of solid minerals does not vary significantly from its administration of the oil and gas program.⁹⁷

Despite the fact that royalties from hard minerals represent a large percentage of the total royalties paid on all Indian leases, the Department's administration of this program has never been adequately subjected to comprehensive Congressional or Executive examination.⁹⁸ However, because the solid minerals programs are managed by the same three agencies within the Department of the Interior that administer the oil and gas program, many of the problems that have been raised by reviews of that program may likewise apply to the government's management of solid minerals. The lack of any prior comprehensive review, moreover, makes this area ripe for study.

3. Timber

The management of Indian timber resources is conducted solely by the BIA, through its Forestry Division and Area Offices. The BIA awards timber contracts, monitors contract compliance, oversee the timber harvesting process, and collects and distributes proceeds from the sale of timber.⁹⁹

⁹⁵ The House Report cited three specific problems: (1) the summarization of data at a higher level of detail than what is needed to properly validate the payments received; (2) the DOI's failure to provide the recipient with an explanation for adjustments made to prior period payments; and (3) the DOI's failure to identify data that may have been rejected by the system because of errors in the data submitted by the payor. Report of the Committee on Interior and Insular Affairs, House of Representatives, 98th Cong., 2nd Sess. (December 1984), at pp. 14-15. In response to criticisms about the payment system, one BIA official has conceded: "We've developed essentially a Band-Aid system [BIA Deputy Secretary Pat] Ragsdale says. If they expect us to follow their lease from cradle to grave and tend to that as if it were our very own, we cannot do that." *The Tulsa Tribune*, Nov. 12, 1987, at p. 1.

⁹⁶ During the period from 1980 to 1985, the total royalties from solid minerals totalled \$150.5 million. DOI/BIA "Overview of Natural Resource Programs for Agriculture, Forestry, and Hard-rock Minerals" (May 1988).

⁹⁷ The BIA has responsibility for conducting inventories of the minerals, determining whether leasing is appropriate, issuing leases, reviewing environmental assessments, and ultimate responsibility for reclamation. The BLM is responsible for reviewing lease agreements, making adjustments to leases, issuing exploration permits, and supervising production. The MMS again determines and collects royalty revenues and conducts audits.

⁹⁸ The focus of reviews of natural resources have all been solely on oil and gas. For example, both the Linowes Commission (appointed by the Secretary) and the Yates Committee (Subcommittee of the Committee on Appropriations, House of Representatives, 99th Congress, 2nd Sess.) were not focusing upon solid minerals.

⁹⁹ DOI/BIA: Overview of Natural Resources Programs for Agriculture, Forestry, and Hard-rock Minerals (May 1988).

As with oil, gas, and solid mineral royalties, the proceeds from the sale of Indian-owned timber total tens of millions of dollars a year, and often provide the only source of income to the many individual Indians and tribal owners.¹⁰⁰ Unlike the oil and gas program, however, there is no federal agency which regularly conducts audits of Indian timber sales.

The Inspector General has performed the only recent review of timber sales, primarily focusing on agency level compliance with the Department's timber regulations.¹⁰¹ That consolidated audit¹⁰² found problems in virtually every area that it examined, including the failure to prepare, develop, or implement forest plans and—despite an infusion of \$90 million in program funds—the abdication of its responsibility for the development of Indian forests. In addition, the I.G. charged that cost-benefit analyses were not used to allocate funds for forest development.¹⁰³ Finally, the I.G. found that advance deposits and payments generally were not collected before harvesting, thus subjecting the tribes to potential (and, in one case, actual) loss of income because of default by the timber company.¹⁰⁴

The I.G.'s audit, however, did not address fundamental issues concerning the extent to which the BIA recovers the full value of Indian-owned timber for the Indian owner. Such issues have been raised primarily by federal litigation.¹⁰⁵

These cases have focused on whether the BIA has breached its trust responsibility by its allegedly ineffective appraisal of Indian timber, its poor bid processing, and its inadequate review of timber sales agreements. In addition, litigation has raised question about whether the BIA has failed to uphold its trust responsibility to Indians when dealing with private timber companies.¹⁰⁶

¹⁰⁰ The sale of Indian-owned timber totalled approximately \$65 million in 1987. *Id.* Timber sales this year are expected to exceed this figure. BIA Forms S-490, Jurisdictional and State Summaries.

¹⁰¹ DOI/OIG Audit Report: Forestry Management Program—Bureau of Indian Affairs, W-IA-BIA-32-85 (September 1987).

¹⁰² The audit was performed at the BIA offices which are responsible for 74 percent of the annual commercial cut on Indian-owned lands. The audit's "overall objectives" were limited to the determination of "whether the required forest management plans were properly developed and whether the program objective of reducing the forest development backlog was achieved." *Id.*, at p. 1. This audit also looked at forest management operations at four agency offices "to determine if benefit-to-cost analyses were used effectively to allocate forest development funds." *Id.* Finally, it checked the operations at two agency offices to determine "if required advance deposits were collected for timber sales." *Id.*

¹⁰³ *Id.* at pp. 11-14.

¹⁰⁴ *Id.*, at pp. 15-16.

¹⁰⁵ See, e.g., *United States v. Mitchell*, 445 U.S. 535 (1980), *Klamath and Modoc Tribes v. United States*, 174 Ct. Cl. 483 (1966); *Navajo Tribe v. United States*, 586 F.2d 192 (Ct. Cl. 1978), *White Mountain Apache v. Hodel*, No. 87-1504 (9th Cir.) (pending).

¹⁰⁶ *Id.*

PART THREE: ANALYSIS OF BUDGET AND SUPPLEMENTAL REQUEST

1. INTRODUCTION

The Special Committee has made a concerted effort to manage its budget in as conservative a fashion as possible. Compared to any other comprehensive Senate investigation, however, the Special Committee is seriously underfunded. That is not meant as a complaint, but to put in context our request for supplemental funds. Unfortunately, there is no way, even with the most conservative fiscal management undertaken by the Special Committee, that this investigation can be conducted fully given its current level of authorized funds. Accordingly, we respectfully request a supplemental appropriation of \$108,000 for unanticipated and increased costs of travel, transcription and witness fees.

The request for additional funds becomes even more imperative as a result of certain unanticipated developments in the investigation. First, because of the geographic dispersion of American Indians, nearly all of the Special Committee's witness are located in the Far West of the United States. We have conducted 278 interviews to date and expect hundreds more, almost all in the West. In an effort to save on otherwise astronomical travel costs, we have based investigators and accountants at times in Oklahoma, Montana, the Pacific Northwest and Colorado. The splitting up of our staff presents considerable problems, but we have taken this undesirable step in order to save on travel expense.

Similarly, the staff has been instructed to cut costs to a minimum while traveling. An example of the kind of extraordinary personal effort made is found in Appendix B to this Report. Because of such sacrifices, the staff has done a remarkable job in saving on travel costs. The staff has spent only one-third of its allowable per diem expenses on travel and saved over 50% on air fare by using government and lower economy rates. See Appendix C.

Moreover, in order to meet the increase in travel costs, the Special Committee, at considerable sacrifice and risk of effectiveness, has decided *not* to hire its fully authorized staff. As a result, the Special Committee has taken approximately \$100,000 away from allotted salary expense and has applied that as an additional reserve against travel.

2. TRAVEL COSTS

Despite these efforts, additional travel funds are required to conduct the investigation properly. Of the allotted travel expense of \$61,882, the Special Committee has expended approximately half, yet we have performed less than one-fifth of our projected travel for the year, particularly if we factor in witness travel in response to the more than 130 subpoenas issued to date. Extrapolating our current level of expense against anticipated travel, we arrive at an

estimate of \$150,000 in travel costs. After we apply the \$30,000 remaining and the \$100,000 reserve from salaries, the Special Committee needs an additional \$20,000 for travel. This figure is a bare minimum because to arrive at the figure above all travel was assumed to occur at a government rate, whereas most of our witnesses traveling to Washington will not be government employees.

3. TRANSCRIPTIONS

Another item in our budget that was inadequately funded was transcript costs. The transcript costs for the Senate Iran-Contra Committee were, we understand, \$134,571.51. That Committee deposed approximately 290 witnesses.¹⁰⁷ Indeed, the majority of those depositions were conducted jointly with the House of Representatives and were transcribed by official House reporters at no charge to the Senate. The Special Committee has already interviewed 278 people, most of whom will need to be deposed under oath and the process has just begun. We will thus exceed the total number of Senate Iran-Contra depositions, and all of ours now must be borne at Senate expense. Nonetheless, we believe we can take many cost saving steps in the deposition process and save substantially on reporters' fees. The Special Committee does not require the full \$134,571 the Iran-Contra Committee had, even though we will certainly exceed their total number of depositions. Our best estimate for our deposition cost would be half the Iran-Contra expense, or \$68,000.¹⁰⁸ Of course, in our desire to save funds we may have seriously underestimated our actual need. Nonetheless, we believe the Rules Committee is best served by requests for the minimum without any cushion, rather than estimates that are inflated in any matter.

4. WITNESS FEES

Hundreds more witnesses will be questioned, most of them under subpoena. The majority of the witnesses will be asked to travel great distances to Washington, in far greater numbers than many previous Senate investigations, such as Iran-Contra. Senate Resolution 259 (100th Cong., 1st Sess). requires the reimbursement of all expenses for traveling witnesses. Such expenses include not only the incurred travel costs but the payment of per diem expenses (now \$117.00 daily) for the Washington Metropolitan Area. Given the likelihood of extensive depositions, it is necessary to seek additional funds of \$20,000 to cover the unanticipated increase in witness costs.

5. CONCLUSION

The Special Committee's request represents only approximately 12 percent of the Special Committee's entire budget and is certainly liberal, fair and reasonable given our work and the budget-

¹⁰⁷ The public hearings were transcribed by official House reporters at no cost to the Senate.

¹⁰⁸ Our current allocation of \$12,000 must be maintained for the public hearings.

ary considerations fully set forth above. Therefore, to meet our administrative expense and perform the investigation entrusted to us, the Special Committee most respectfully requests an additional supplemental appropriation of \$108,000 for fiscal year 1988, through February 28, 1989.



APPENDIX A

FEDERAL MANAGEMENT OF INDIAN OIL AND GAS RESOURCES

INTRODUCTION

Under the Mineral Leasing Act of 1920, the Congress assigned management responsibility for development of gas, oil, and mineral resources on federal and Indian lands to the Department of Interior. The Act mandates that Indian tribes and individual Indian allottees are to receive 100 percent of the royalties collected for oil, gas, coal, and mineral resources removed from their lands. The Act also provides that the states generally are to receive 50 percent of the royalties collected from such resources removed from federally owned land within their borders.¹

THE NATURE OF THE PROCESS

The Secretary of Interior has delegated responsibilities for the management of Indian oil and gas resources to three agencies. In sum, the MMS has primary responsibility for royalty management, and the BLM and the BIA have certain responsibilities regarding leasing, site inspection, and disbursement of royalties to Indian tribes and allottees. The specific responsibilities assigned to these entities are as follows:

The Bureau of Land Management

- evaluating mineral resources and making lease recommendations when requested;
- approving permits and production plans;
- conducting inspections and enforcing compliance regulations;
- monitoring use of leases and protecting leases from drainage; and
- reviewing proposed unitization and communitization agreements for the BIA.

The Minerals Management Service

- collecting, accounting for, and disbursing to the BIA royalty and other revenues from producing leases on Indian lands;
- ensuring payor compliance with requirements regarding timely and accurate payment of mineral lease royalty related revenues through enforcement of regulations and audits;
- providing the BIA and tribes with distribution data and explanation of payments; and

¹ The only exception to this general rule is the treatment of Alaska, which receives 90 percent of the royalties collected.

- providing the BIA, tribes, and the BLM with onshore production data when onshore production reporting is implemented.

The Bureau of Indian Affairs

- determining if mineral development leasing on Indian trust land is appropriate;
- conducting lease sales and approving or disapproving non-standard agreements;
- issuing leases and serving as the agency of record for all lease documents and Indian ownership data;
- approving assignments, unitization agreements, and communitization agreements;
- cancelling leases for violation of terms;
- collecting and accounting for bonuses, first-year rentals, and rentals on non-standard leases;
- investing lease revenues and disbursing lease revenues and proceeds of investments to tribal and individual Indian allottee owners; and
- explaining to individual Indian allottees the basis for lease payment distributions.

Royalty Determination

Royalty accounting is complex by nature. Royalties generally are paid on the basis of sales, sometimes after the product has been processed as is the case with gas. If several companies share in producing or purchasing from a lease, it further complicates matters because royalty payments also are shared. At the time of sale, each company establishes a value for the product, which takes into account processing and transportation allowances, as well as the market price for the product. Once the value is established, the company then computes the royalty amount due and submits its payment. These industry-calculated payments are accepted as correct by MMS, subject to subsequent audit. However, tracking production and verifying the royalty calculation through this maze is difficult.

The following is offered to illustrate what is involved:

- gas is pumped out of the ground at the wellhead and the leasing companies report production volume to the Department's Bureau of Land Management for the purpose of verifying production;
- gas is transported to a processing plant, creating a transportation cost allowance which is calculated by industry and can vary from lease to lease;
- after the gas is processed, industry calculates a processing cost allowance which can vary based on the plant involved and the quality of the product being processed;
- the finished product is sold;
- industry calculates the value of the finished product, deducting the transportation and processing cost allowances, and computes the royalty payment;
- industry reports the sale of its finished product and sends the royalty payment and sales volume to the Minerals Management Service;

- the Minerals Management Service accepts the payment and disburses the royalty payments to the respective States or the Bureau of Indian Affairs for investment or distribution to tribes and individual Indian allottees; and
- the Minerals Management Service audits the payments on a six-year audit cycle on a random sample taken from the total lease universe of 25,000 leases.

BACKGROUND AND CHRONOLOGY OF SIGNIFICANT EVENTS IN THE MINERALS MANAGEMENT SYSTEM

The Department's efforts to collect and distribute royalties for oil and gas resources extracted from federal and Indian lands have been the subject of frequent criticism. As early as 1959, the General Accounting Office (GAO) reported serious shortcomings in the Department's royalty collection and distribution activities. This, in turn, was followed by numerous other reports by the GAO, Congressional committees, and internal Departmental oversight groups. In response to the findings of these studies in 1978, the Chief of the Conservation Division of the Geological Survey appointed a task force to study the problems identified in these prior reports and to recommend a course of action to correct them.

In its report, the task force recommended that:

- a new royalty system should be designed, developed and implemented to replace the existing Royalty Accounting System (RAS);
- the royalty accounting function should be centralized in a single location, preferably Denver, Colorado;
- a separate organizational structure should be created and headed by a Deputy Division Chief for royalty management; and
- a comprehensive audit capacity should be established to perform audits of royalty payment compliance matters.

These recommendations formed the foundation for many of the Department's subsequent efforts to develop and implement an improved royalty management program.

In July 1981, former Secretary James G. Watt established the Commission on Fiscal Accountability of the Nation's Energy Reserves (the Linowes Commission)² to provide advice to him regarding accountability for gas and oil removed from federal and Indian lands. In its report dated January 1982, the Commission stated that:

Because the Federal government has not adequately managed this multibillion dollar enterprise, the oil and gas industry is not paying all the royalties it rightly owes. . . . The results of individual audits, which have often uncovered large underpayments, suggest that hundreds of millions of dollars due the U.S. Treasury, the States, and Indian tribes are going uncollected every year.³

² This Commission is commonly referred to as "the Linowes Commission," so named for the Chairman of the Commission, David F. Linowes.

³ Report of the Commission on Fiscal Accountability of the Nation's Energy Resources (January 1982), at p. xv.

The report also included approximately 60 recommended actions to correct weaknesses in the program's collection process, organization, and management.

One of the first actions taken by the Secretary following the publication of the Commission's report was issuance of an order transferring the royalty management functions from the scientific-oriented environment of the Geological Survey to MMS, a newly established agency.

In December 1982, to respond to perceived problems in the Department's past mismanagement of the royalty management program, the Congress enacted the Federal Oil and Gas Royalty Management Act (FOGRMA).⁴ This legislation, which was a culmination of hearings and oversight activities by the House Committee on Interior and Insular Affairs, was a clear directive to the Department to correct its past performance.

As a part of its oversight responsibility, in June 1984, the House Committee on Interior and Insular Affairs initiated another review of the Department's efforts to implement the Congressional mandate to improve its royalty collection, distribution and management efforts. In December 1984, the Committee issued a report in which it found that many of the problems previously identified in the royalty management program not only persisted but in some areas were actually worse. The report also contained 16 recommendations to correct the problems found during the review.

In April 1985, the Secretary of Interior issued a Management Action Plan that responded to the House Committee's report and defined a comprehensive management plan to improve the performance of MMS, BLM, and BIA.⁵ Since publication of the Management Action Plan, the Department has published periodic status reports describing its progress towards implementation of the plan.

In August 1985, in further response to the House Committee's 1984 report, the Secretary of Interior established the Royalty Management Advisory Committee (RMAC) to help the MMS correct the problems in the royalty management program. The Committee was to provide advice regarding policies and procedures which affect recipients of gas and oil royalties, lessees, operators, and royalty payors, as well as, users of the MMS's fiscal and production accounting systems.

In March 1986, the GAO⁶ reported that the BIA had fallen far behind in its responsibilities under the FOGRMA in providing useful explanations of royalty payments to Indians. The GAO recommended that the Secretary of Interior direct the Assistant Secretary for Indian Affairs to:

—promptly implement the Bureau's Royalty Distribution and Reporting System Bureau-wide;

⁴ Public Law 97-451.

⁵ The plan contained 42 action elements designed to enable the Department to be responsive to its responsibilities to determine, collect, and distribute bonuses, rents, and royalties from oil, gas, coal, and mineral resources extracted from federal and Indian owned lands. Included in the 42 action elements were specific actions in response to the 16 recommendations discussed in the House Committee's report.

⁶ GAO Report, Interior Has Not Solved Indian Oil and Gas Royalty Payments Problems, (GAO/IMTEC-86-13).

- change the Bureau's computer system to provide royalty rates on the payment statement;
- redesign the payment statement to make it easier to understand and use; and
- resolve by offset, collection, or write-off past overpayments resulting from not properly accounting for oil and gas royalty payments in the Anadarko area.

The GAO also found that a new computer, acquired to help the MMS carry out its responsibilities, would not solve the problems mentioned in the House Committee's 1984 report. The GAO recommended that the Secretary require the Director of the MMS to assess the feasibility of expanding its Auditing and Financial System's exception processing to include other types of exceptions as originally designed to identify candidates for future audits.

In June 1986, the Department's Inspector General reported on the BLM's Inspection and Enforcement Program, with regard to program support; accountability for oil and gas produced and sold; oil transporter inspections; uniform interpretation, enforcement, and implementation of regulations; cooperative agreements; and training.⁷ In November 1986, the Inspector General also reported that the BLM had not effectively protected federal and Indian lands from drainage of oil and gas.

In testimony on April 28, 1987, before the Subcommittee on Mining and Natural Resources, House Committee on Interior and Insular Affairs, the GAO stated that the Department continues to experience serious difficulties in the following activities: (1) developing and publishing acceptable product valuation guidance; (2) implementing an effective accounting system for royalty collections and distributions; (3) verifying production through a viable inspection program; and (4) establishing an adequate auditing program to check on the accuracy and completeness of the industry's royalty payments.

Most recently, in March and April 1988, the Inspector General issued four reports on the audit of the four divisions within the MMS (Valuation and Standards Division, Fiscal Accounting Division, Production Accounting Division, and the Royalty Compliance Division). The following briefly describes the audit objectives, findings, and recommendations for each of the MMS Divisions reviewed.

(1) *Valuation and Standards Division.*⁸—The Inspector General found that the MMS was unable to finalize product valuation regulations and guidelines for oil, gas, and coal royalties in a timely manner as recommended by the Linowes Commission. Publication of the final regulations was delayed for almost 5 years primarily because (1) valuation issues raised by certain interest groups could not be resolved on a timely basis and (2) the division managers stated that they encountered difficulty in developing regulations to address the many types of complex valuation issues. However, the

⁷ DOI/OIG Audit Report: Review of Bureau of Land Management Inspection and Enforcement Program, C-LM-BLM-10-85, June 1986. This report also contained sixteen recommendations to the Director of the BLM and one suggestion to the Assistant Secretary for Land and Minerals Management.

⁸ DOI/OIG Audit Report: Mission Accomplishment, Valuation and Standards Division, Royalty Management Program, Minerals Management Service. E-LM-MMS-07-87A (March 1988).

audit revealed that during fiscal year 1986, the division expended most of its time in resolving standard issues on a case-by-case basis that would have been obviated. As a result, the audit revealed that 74 percent of the division's staff resources were not used efficiently and effectively.

The report recommended that the Director of the Minerals Management Service: (1) expedite the publication of final regulations and guidelines and (2) review division personnel requirements and retain only those employees who are required to maintain regulations and respond to questions on regulatory and policy issues.

(2) *Fiscal Accounting Division.*⁹—The Inspector General found that improvements were needed in collecting, disbursing, and accounting for federal and Indian mineral revenues. Specifically:

- The proper disposition of over-recoupments of monies had not been determined on 285 Indian leases because the work was considered to have a low priority.
- Adequate staff resources had not been dedicated to reconcile 1,300 payor account balances. In addition, the division had not implemented adequate procedures to ensure that the disposition of monies in reported underpayments was effectively resolved.
- The division did not assess liquidated damages against payors for the erroneous reporting of royalties, because these errors did not prevent disbursement of royalties to the states and Indians. As a result, the costs to correct these errors were not offset by the assessment of damages that could have been made against the payors.
- The disbursement of royalty monies was not made in a timely manner or to the proper recipient, and coastal states lost interest because of current reporting procedures.

The report recommended that the Director of the MMS ensure that: (1) over-recoupments taken on Indian leases are reviewed and corrected; (2) adequate resources are dedicated to reconcile account balances; (3) reported royalty underpayments are resolved, whether or not all data in royalty reports has passed the verification routines in the automated accounting system; (4) liquidated damages are assessed for erroneous reporting which impacts royalty payments; and (5) royalties collected are disbursed in a timely manner and to the proper recipient.

(3) *Production Accounting Division.*¹⁰—The Inspector General concluded in the report that full implementation of the automated Production Accounting and Auditing System may not be cost-effective or efficient for meeting the division's mission of providing onshore production accounting and reporting. The report recommended that the Assistant Secretary for Land and Minerals Management limit the implementation of the onshore system to one location to determine whether the full implementation of the system will provide the Service with the anticipated benefits at an acceptable cost.

⁹ DOI/OIG Audit Report: Mission Accomplishment, Fiscal Accounting Division, Royalty Management Program, Minerals Management Service. E-LM-MMS-07-87B (April 1988).

¹⁰ DOI/OIG Audit Report: Mission Accomplishment, Productions Accounting Division, Royalty Management Program, Minerals Management Service. E-LM-MMS-07-87C (April 1988).

(4) *Royalty Compliance Division.*¹¹—The Inspector General concluded that the Division was not providing adequate audit coverage of the mineral lease universe. Lease coverage was inadequate because the division had not developed an audit inventory or a six-year audit plan. The report also found that the resident audit staffs, located at the companies' offices, had comprehensively audited less than two percent of the lease universe in fiscal years 1986 and 1987. Finally, MMS had not allocated audit resources according to the number of leases and the revenues collected.

The report recommended that the Director of the MMS: (1) compile a lease inventory; (2) develop a six-year audit plan that includes auditing revenues collected in 1982 before the records are no longer available because of the statute of limitations; (3) eliminate or minimize audit work on refund requests and reconciliations; and (4) distribute audit resources based on work load requirements.

¹¹ DOI/OIG Audit Report: Mission Accomplishment, Royalty Compliance Division, Royalty Management Program, Minerals Management Service. E-LM-MMS-07-87E (April 1988).

APPENDIX B

MEMORANDUM

To: Ken Ballen.

From: Mary Lou Soller.

Re: Travel expenses—Money saving efforts.

Date: August 26, 1988.

The following are ways that I have tried to save money in travel expenses for the Special Committee.

(1) Obviously, I have always used government rates (or other prevailing rates if they were cheaper)¹ for cars, hotels, and airfare. In addition, on several occasions, our travel agent has made a reservation for me and later changed it when we found that other companies had cheaper rates. I always report hidden charges (Alamo) and good rates (Dollar) back to the travel agent so that they can record these in our file for future use by the Special Committee.

(2) Whenever possible, I have tried to avoid renting a car. (a) In Oklahoma in April, I needed to travel from Oklahoma City to Bartlesville. I arranged for a ride from Oklahoma City to Bartlesville, OK, with a consultant to avoid renting a car. Therefore, I only had to rent a car for one day, rather than five, while I was there. While I was in Tulsa, I learned that I needed to go back to Oklahoma City again before returning to Washington, D.C. I was able to save money again by taking the free Phillips shuttle bus from Bartlesville to Tulsa to catch my plane.

(b) On my trip to Kansas in May, I needed transportation from the airport in Kansas City to Leavenworth, an hour away. I also needed return transportation. I was able to save the Special Committee the cost of a rental car or other transportation by obtaining a ride with an employee of another government agency, at no cost to the Special Committee.

(c) In Albuquerque, I had friends drive me around whenever possible and relied on cabs rather than rental cars to save money.

(3) In Albuquerque, where I stayed for a week in July, I stayed with a friend, thus obviating the cost of lodging and cutting down the cost of meals.²

(4) In April, as I noted above, I had to suddenly add a segment of travel from Tulsa to Oklahoma City. I found a plane flight for \$19 which left late at night (11:00 p.m.) so that I could save the differ-

¹ On my trip to Tulsa in June, for example, I learned that the rental car company had a cheaper weekend rate than government rate, so I used that one.

² The government rate at a nearby hotel cost \$53.52 per night. This cost was saved by staying with my friend for a week. This arrangement also saved money on meals, since I usually ate breakfast at her house at no cost to the Special Committee.

ence in fare between \$19 and \$115 (for a flight that left at a much more convenient time).

(5) If it will save a day of car rental, if I arrive in the evening or am leaving early in the morning, I will rely on the free airport buses that most hotels have. If I am arriving in the evening, I take the bus to the hotel, check in, and take the free bus back to the airport in the morning to rent the car. Although this is somewhat less convenient, we are not charged for a rental car during a period when it is not needed for transport to meetings.

APPENDIX C

In securing government and lower economy fares when traveling to the western region of the United States, the Special Committee has saved more than 50 percent on airfare against normal full fares. In some cases, we have traveled on special economy fares when they were lower than the government rate. Meeting the requirements for these economy fares meant that staff had to travel off-hours and on weekends, which we did despite the inconvenience. For example, we have compiled figures for eighteen random trips comparing the full fares and the lower fares. Collectively, the full fares would have cost the Special Committee \$8,392.50. By securing the government or lesser economy fares, we expended only \$3,934.50, thus saving more than 50 percent.

A review of our per diem travel expenses also shows that the staff has incurred expenses well below the \$117/day rate permissible under the Senate Travel Regulations. To illustrate this point, an accounting of the staff's travel vouchers to date shows that approximately twenty-seven trips have been taken for various lengths of time. Had the staff incurred the permissible per diem rate of \$117/day for each day traveled, these trips would have cost the Special Committee \$29,952.00. Instead, the actual per diem expenses incurred were \$10,603.55, or approximately one third.